

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

APRIL MALONE & CELITRIA WATSON)
)
Plaintiffs,) Civil Action No.
) 2:18-cv-02201-MSN/tmp
v.) Jury Demanded
)
SHELBY COUNTY, et. al.,)
)
Defendants.)

MOTION TO DISMISS

Defendants Assistant District Attorney Paul Hagerman (“ADA Hagerman”), Assistant District Attorney Austin Scofield (“ADA Scofield”), and Assistant District Attorney Chris Scruggs (“ADA Scruggs”) (collectively, “ADA Defendants”) by and through the Office of the Attorney General, respectfully move to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(5)-(6).

GROUND FOR DISMISSAL

- I. Plaintiffs’ attempted service of process was ineffective because:
 - A. they served a person other than ADA Defendants that was not authorized to accept service on ADA Defendants’ behalf;
 - B. they did not include a copy of the Complaint with the process materials; and
 - C. they did not serve ADA Defendants within the requisite time period.
- II. Plaintiffs’ waived their right to file this action in federal court by filing an action based on the same alleged facts in the Tennessee Claims Commission.
- III. ADA Defendants, sued in the official capacities, are immune from suit under the doctrine of sovereign immunity. Further, ADA Defendants, sued in their official capacities, are not “persons” for purposes of § 1983 claims.

IV. ADA Defendants, sued in their individual capacities, are immune from suit under the doctrine of absolute prosecutorial immunity.

V. Should this Honorable Court, exercise supplemental jurisdiction over Plaintiffs' state law claims, Plaintiffs' claims are nonetheless barred by sovereign immunity, state employee immunity, and prosecutorial immunity.

In support of this Motion, the Defendants rely upon the contemporaneously filed memorandum in support, the affidavits of ADA Paul Hagerman, ADA Austin Scofield, and ADA Chris Scruggs, the certified claim for damages of April Malone, and the certified claim for damages of Celitria Watson.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

/s/ Rainey A. Lankford
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CERTIFICATE OF SERVICE

I hereby certify that, on March 5, 2019, a true and correct copy of the foregoing *Motion to Dismiss* was served via CM/ECF, upon the following:

John Marshall Jones
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Shelby County Attorney's Office
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Counsel for Shelby County

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Counsel for City of Memphis

I hereby certify that, on March 5, 2019, a true and correct copy of the foregoing *Motion to Dismiss* was served via U.S. Mail, postage prepaid, upon the following:

APRIL MALONE
4610 Covington Pike
Memphis, TN 38135
Pro Se Plaintiff

CELITRIA WATSON
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Pro Se Plaintiff

/s/ Rainey A. Lankford
RAINEY A. LANKFORD